

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII, Rule 32(2) (b))

Description of Case

C.M. No. 821/06

**Smt. Kamal Jeet Kaur
& others
Vs
State of Uttaranchal**

Approved for reporting

Not approved for reporting

Date of decision 28.11.2006

Initials of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Case No. 821 of 2006

1. Smt. Kamal Jeet Kaur w/o Nazar Singh Resident of Ward No. 4, Gadarpur, District Udham Singh Nagar
 2. Smt. Sukhwant Kaur d/o Sri Nazar Singh, A-1 Basant Kunj, New Delhi
 3. Nazar Singh s/o Late Sri Guru Dutt Singh
 4. Manmeet Singh s/o Sri Nazar Singh
 5. Jaswinder Singh s/o Sri Nazar Singh
 6. Devendra Pal Singh s/o Sri Nazar Singh, All r/o ward No. 4 Gadarpur, District Udham Singh Nagar.
- Petitioners

Versus

1. State of Uttaranchal
 2. Manpreet Kaur D/o Sri Nazar Singh R/o Ward No.6 Sitarganj, District Udham Singh Nagar.
- Respondents

Dated : 28.11.2006

Hon'ble Rajesh Tandon, J.

Heard Sri K.S. Bora counsel for the petitioners, learned A.G.A. for respondents.

By the present application under section 482 Cr.P.C., the applicants have prayed for quashing the proceedings in Criminal Case No. 1087 of 2006, State vs. Devendra Pal Singh and others under sections 498-A, 323, 504, 506 I.P.C. and $\frac{3}{4}$ Dowry Prohibition Act, P.S. Sitarganj District U.S. Nagar, pending in the court of Judicial Magistrate, Khatima.

Briefly stated respondent no. 2 Manpreet Kaur has lodged F.I.R. under Section 498-A, 323, 504, 506 I.P.C. and $\frac{3}{4}$ of

Dowry Prohibition Act against the applicants in P.S. Sitarganj. The respondent no. 2 has alleged in her complaint that she was married to applicant no. 6 Devendra Pal Singh on 8.12.2003. She gave birth to a child on 11.10.2004. It has been alleged by the complainant that soon after the marriage applicant no. 1 along with other members of his family started ill treating the complainant and demands dowry. The matter was also placed before Women Cell.

The police investigated the case and charge sheet has been filed in the Court of Judicial Magistrate, Khatima. The learned Magistrate took cognizance in the case and issued summons to the applicants.

Feeling aggrieved the present application under section 482 Cr.P.C. has been filed by the applicants.

According to the applicants, the applicant no. 6 was married on 8.12.2003 to the respondent no. 2 After staying for few months in her in-laws house, respondent no. 2 left the house and no complaint about the dowry was made. On 11.10.2004 a male baby was also borne. The applicants have further submitted that on 20.2.2006, applicant no. 6 has filed a suit for restitution of conjugal rights under section 9 of the Hindu Marriage Act and as a counter blast the F.I.R. was lodged on 19.7.2006.

Counsel for the applicants has further submitted that the complainant also approached the Women Cell at Rudrapur and ultimately Women Help line Cell has given his final report that there is no case of dowry.

Since the applicants are being prosecuted for the offences punishable under sections 498-A, I.P.C. and 3/4 of the Dowry Prohibition Act, it will be open for the petitioners to defend

their case before the Court concerned. Without expressing any opinion on the merits of the case, since the disputed question of fact with regard to the offence punishable under sections 498 A I.P.C. and 3/4 of the Dowry Prohibition Act are involved, therefore, no case is made out for interference under Section 482 Cr.P.C.

After relying upon the judgment in ***State of Haryana and others v. Ch. Bhajan Lal and others*** in AIR 1992 SC 604, in ***Union of India Vs. Prakash P. Hinduja and another*** 2003 SCC (Cri) 1314, the Apex Court has held as under:

“9. The grounds on which the prosecution initiated against an accused can also be quashed by the High Court in exercise of power conferred by Section 482 CrPC has been settled by a catena of decisions of this Court rendered in *R.P. Kapur v. State of Punjab* AIR 1960 SC 866, *Madhu Limaye v. State of Maharashtra* (1977) 4 SCC 551, *Municipal Corpn. Of Delhi v. Ram Kishan Rohtagi* (1983) 1 SCC 1 and *Raj Kapoor v. State* (1980) 1 SCC 43. The matter was examined in considerable detail in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 and after review of practically all the earlier decisions, the Court in para 108 of the Report laid down the grounds on which power under section 482 CrPC can be exercised to quash the criminal proceedings and basically they are: (1) where the allegations made in the FIR or complainant, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any

offence or make out a case against the accused (2) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (3) where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.

10. The principal question which, therefore requires consideration is whether the court can go into the validity or otherwise of the investigation done by the authorities charged with the duty of investigation under the relevant statutes and whether any error or illegality committed during the course of investigation would so vitiate the charge-sheet so as to render the cognizance taken thereon bad and invalid.”

So far as the instant petition under section 482 Cr.P.C. is concerned no interference can be made under section 482 Cr.P.C. as both the parties will be at liberty to lead the evidence in view of the observations made by the Apex Court in the case *Medchl Chemicals and Pharma (P) Ltd. vs. Biological E. Ltd. and others* (2003) 3 SCC 269.

In view of above, since the applicants no. 1 and 2 are ladies and are residing separately, applicant no. 3 is the father applicant no. 4 and 5 are brothers and applicant no. 6 is the Govt. employee, I direct the applicants to appear before the

concerned Presiding Officer. On the surrendering of the applicants, the Court shall permit the release of the applicants on furnishing personal bonds or sureties to the satisfaction of the Magistrate concerned for their appearance in the case.

Subject to the observations made above, application under Section 482 Cr.P.C. is dismissed.

(Rajesh Tandon, J.)

Dated 28.11.2006

*Dhyani